

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
3 ALCOHOLIC BEVERAGE CONTROL BOARD

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6 IN THE MATTER OF: :

7 Black Whiskey: CASE #16-CMP-00408

8 t/a Black Whiskey :

9 1410 14th Street N.W. :

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10 License #91434 :
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11  Retailer CT :
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12 ANC 2F :

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13  No ABC manager on duty      :
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15 Wednesday, November 2, 2016

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17 Whereupon, the above-referenced matter
18 came on for hearing at the Alcoholic Beverage
19 Control Board, Reeves Center, 2000 14th Street,
20 N.W., Suite 400S, Washington, D.C. 20009.

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2 BOARD MEMBERS PRESENT

3 NICK ALBERTI, BOARD MEMBER

4 JAMES SHORT, BOARD MEMBER

5 MIKE SILVERSTEIN, BOARD MEMBER

6 JAKE PERRY, BOARD MEMBER

7

8 ALSO PRESENT:

9 FERNANDO RIVERO

10 ANTHONY HOWZE

11

1 P R O C E E D I N G S

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3 CHAIRPERSON ANDERSON: Moving on to case
4 #16-CMP-00408, Black Whiskey, license #914---
5 Will the parties please approach and identify
6 themselves for the record, please?

7 MR. RIVERO: Good morning, board members,
8 Fernando Rivero for the District of Columbia.

9 CHAIRPERSON ANDERSON: Good morning, Mr.
10 Shapiro.

11 MR. RIVERO: Rivero.

12 CHAIRPERSON ANDERSON: I -- well, you see,
13 Mr. Rivero, I'm just being all over the board
14 with you but it is your name, and I do apologize,
15 but as you see I've had an interesting morning,
16 so I do apologize for the -- and I'll call you by
17 the correct name. I see that the licensee is not
18 here. Does the government -- Mr. Shapiro, does
19 the -- or -- Mr. Rivero. Do you know whether or
20 not the licensee will appear?

21 MR. RIVERO: I would like the board to take
22 administrative notice in its file which indicates

1 that there should be a personal service form
2 dated July 25, 2016, which shows that
3 Investigator Plat has served the establishment a
4 show cause notice dated July 20th, and I believe
5 that the date on that notice never changed.

6 CHAIRPERSON ANDERSON: All right.

7 MR. RIVERO: And Anthony Howze, the ABC
8 investigator for the establishment, accepted that
9 notice and signed for it so there's a record to
10 that effect in the agency's file.

11 CHAIRPERSON ANDERSON: Since the respondent
12 is not here, the government -- is the government
13 prepared to move forward?

14 MR. RIVERO: Yes.

15 CHAIRPERSON ANDERSON: And pursuant to D.C.
16 Official Code section 25-1247, the board has the
17 authority to proceed ex partite where the
18 licensee waives the hearing or fails to appear at
19 that hearing without showing good cause. The
20 record reflects that the licensee was properly
21 served. The licensee is not here today and no
22 good cause has been presented herein, therefore

1 we are proceeding with the show cause hearing.

2 Do you wish to make an opening argument, sir?

3 MR. RIVERO: Yes. Good morning, board
4 members. We are here today in the show cause
5 matter for Black Whiskey, LLC, trading as Black
6 Whiskey, located at 1410 14th Street Northwest.
7 The show cause notice in this matter concerns the
8 charge that the licensee permitted the
9 establishment to operate without the presence of
10 a board-approved manager in violation of D.C.
11 Official Code 25-701, 2012 replacement, and the
12 testimony of our investigator today will show
13 that on Wednesday, March 23, 2016, at
14 approximately midnight an investigator entered
15 the establishment in response to a noise
16 complaint. Upon entering the establishment the
17 investigator identified himself and requested to
18 speak to the owner or manager, and an employee,
19 Mr. Hogan, reported that no ABC manager or owner
20 was present. The government will call its
21 witness at this time, investigator Anthony Howze.

22 MR. HOWZE:

1 CHAIRPERSON ANDERSON: Can you raise your
2 right hand, please? Do you swear or affirm to
3 tell the truth and nothing but the truth?

4 MR. HOWZE: I do.

5 CHAIRPERSON ANDERSON: Be seated.

6 MR. RIVERO: Good morning, sir. What is your
7 name?

8 MR. HOWZE: Anthony Howze.

9 MR. RIVERO: Can you spell your last name for
10 the record, please?

11 MR. HOWZE: H-O-W-Z-E.

12 MR. RIVERO: And what is your occupation?

13 MR. HOWZE: ABRA investigator with ABRA.

14 MR. RIVERO: And what are your duties, Mr.
15 Howze, as an ABRA inspector?

16 MR. HOWZE: I conduct inspections and
17 investigations for ABC licensed establishments.

18 MR. RIVERO: And are you familiar with the
19 establishment known as Black Whiskey?

20 MR. HOWZE: I am familiar with it.

21 MR. RIVERO: And how so are you familiar?

22 MR. HOWZE: On the 23rd of March 2016, I

1 entered the establishment to do a regulatory
2 inspection to see an ABC manager.

3 MR. RIVERO: Okay. I'm going to go ahead and
4 show you a document that I have marked government
5 exhibit #1 for identification, a copy of which
6 would have been available to the licensee had the
7 licensee appeared and a copy of which I
8 understand the board already has in its records.
9 Take a moment to look at that document and tell
10 me what it is.

11 MR. HOWZE: This is a copy of my
12 investigative report.

13 MR. RIVERO: Connected to this case?

14 MR. HOWZE: Correct.

15 MR. RIVERO: Take a moment to ensure that the
16 report is complete.

17 MR. HOWZE: It is, in fact, complete.

18 MR. RIVERO: Okay. And who made that report?

19 MR. HOWZE: I did.

20 MR. RIVERO: It's an accurate copy of the
21 report that's in the government file?

22 MR. HOWZE: Yes.

1 MR. RIVERO: The government would now move
2 into evidence at this time government exhibit #1
3 which is the agency's investigator's report in
4 the case.

5 CHAIRPERSON ANDERSON: So ruled.

6 MR. RIVERO: So you indicated, investigator
7 Howze, that on March 23rd you went to conduct a
8 regulatory inspection. Is that correct?

9 MR. HOWZE: Correct.

10 MR. RIVERO: All right. What happened when
11 you arrived at the establishment?

12 MR. HOWZE: I met supervisor investigator
13 Kevin Puente outside of the establishment. He
14 was already there as he had a phone call for a
15 noise complaint. He went into the establishment
16 of Black Whiskey and made contact -- tried to
17 make contact with the ABC manager or owner and
18 found that there was not an ABC manager or owner
19 on duty. And so he called me from ABRA to work
20 with him on this.

21 MR. RIVERO: What did you do when you got the
22 call?

1 MR. HOWZE: Met supervisory investigator
2 Kevin Puente outside of the establishment. He
3 explained to me that they did not have an ABC
4 manager or owner present and he wanted me to do
5 the regulatory inspection and we notified them
6 that they would receive a violation for no ABC
7 manager being present.

8 MR. RIVERO: And what did you do after that
9 conversation?

10 MR. HOWZE: We both entered the establishment
11 together and walked up to the stairs -- walked up
12 the stairs -- and speak directly to the gal that
13 he spoke with, an employee, Mr. Kenneth Hogan, an
14 employee.

15 MR. RIVERO: Okay, and did you speak with Mr.
16 Hogan?

17 MR. HOWZE: I did speak with Mr. Hogan.

18 MR. RIVERO: What was your conversation with
19 Mr. Hogan?

20 MR. HOWZE: Just re-advising him that they
21 were in violation of not having an ABC manager
22 present. I then asked him did they have one,

1 within the time I left the office and the time
2 that I got there. He basically said they didn't
3 have one and I told him, again, that they would
4 be in violation and that I would conduct a
5 regulatory inspection.

6 MR. RIVERO: Did you also ask if the owner
7 was there by chance?

8 MR. HOWZE: I asked if either the owner or
9 the ABC manager was present.

10 MR. RIVERO: And Mr. Hogan's response was no
11 to both?

12 MR. HOWZE: Correct.

13 MR. RIVERO: Okay and what did you do after
14 his response to you?

15 MR. HOWZE: I asked him to help me with the
16 regulatory inspection.

17 MR. RIVERO: Okay, and did that happen?

18 MR. HOWZE: It did, in fact, happen.

19 MR. RIVERO: Okay, all right. And I want to
20 turn your attention to exhibit #1 in your report.
21 Is that document a copy of the regulatory
22 inspection form?

1 MR. HOWZE: It is.

2 MR. RIVERO: Okay. And what does it look
3 like at the bottom here on the left-hand corner,
4 what location did you put down here?

5 MR. HOWZE: Where it says No ABC Manager?

6 MR. RIVERO: Correct.

7 MR. HOWZE: [inaudible 48:27]

8 MR. RIVERO: All right. You completed this
9 form at the time that you conducted the
10 investigation, on that date, correct?

11 MR. HOWZE: At 12:10 a.m., correct.

12 MR. RIVERO: Okay. And after the regulatory
13 inspection what happened?

14 MR. HOWZE: I explained to him exactly what
15 the regulatory inspection was and we went over
16 that. I had finished by then and explained the
17 procedures for attending an ABC Manager class
18 and/or pursuing a 90-day temporary license to
19 qualify them for ___. I explained I would be
20 returning within 30 days to issue the citation
21 for no ABC manager or owner present. He then
22 signed his name down in the space provided. I

1 didn't find any other ABRA violations so I asked
2 him to sign it.

3 MR. RIVERO: Thank you. No further
4 questions.

5 CHAIRPERSON ANDERSON: Thank you. Are there
6 any other questions by any of the board members?
7 Does the government have any other witnesses?

8 MR. RIVERO: No, the government rests.

9 CHAIRPERSON ANDERSON: You can step down.
10 Does the government wish to make a closing
11 statement?

12 MR. RIVERO: Yes. Board members, as is
13 clearly seen the government has met its burden
14 which is a preponderance of the evidence. Is it
15 more likely than not that the government's story
16 here is true? The government has presented
17 credible evidence which is absolutely unrebutted
18 that the investigator asks the employee on the
19 premises, Mr. Hogan, whether there was either an
20 owner or ABC manager and the answer was no, and
21 that was the violation in itself. The documents
22 show that that incident was contemporaneous with

1 the report. Therefore, the government -- the --
2 of its case and the government would recommend an
3 \$800 fine as a penalty in this matter. Thank
4 you.

5 CHAIRPERSON ANDERSON: All right, thank you,
6 Mr. Rivero.

7 CHAIRPERSON ANDERSON: As chairperson of the
8 Alcoholic Beverage Control Board for the District
9 of Columbia and in accordance with Section 405 of
10 the Open Meetings Amendment Act of 2010, I move
11 that the ABC Board hold a closed meeting for the
12 purpose of seeking legal advice from our counsel
13 on case #16-CMP-00408, Black Whiskey, per section
14 405-B4 of the Open Meetings Amendment Act of 2010
15 and deliberating upon case #16-CMP-00408, Black
16 Whiskey, for the reasons cited in section 405-B12
17 of the Open Meetings Amendment Act of 2010. Is
18 there a second?

19 MR. SHORT: Second.

20 CHAIRPERSON ANDERSON: Mr. Short has seconded
21 the motion. I will now take a roll call vote on
22 the motion before us now that it has been

1 seconded.

2 CHAIRPERSON ANDERSON: Ms. Hobson?

3 MS. HOBSON: I agree.

4 CHAIRPERSON ANDERSON: Mr. Silverstein?

5 MR. SILVERSTEIN: I agree.

6 CHAIRPERSON ANDERSON: Mr. Short?

7 MR. SHORT: I agree.

8 CHAIRPERSON ANDERSON: Mr. Alberti?

9 MR. ALBERTI: I agree.

10 CHAIRPERSON ANDERSON: Mr. Perry?

11 MR. PERRY: I agree.

12 CHAIRPERSON ANDERSON: Mr. Anderson? I
13 agree. As it appears that the motion has passed,
14 I hereby give notice that the ABC Board will hold
15 this closed meeting in the ABC Board conference
16 room today pursuant to the Open Meetings
17 Amendment Act.

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19 (Whereupon, the above-entitled matter was
20 concluded.)

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